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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of

Rulemaking to Amend Parts 1, 2, 21, and 25  
of the Commission's Rules to Redesignate  
the 27.5-29.5 GHz Frequency Band, to  
Reallocate the 29.5-30.0 GHz Frequency  
Band, to Establish Rules and Policies for  
Local Multipoint Distribution Service  
and for Fixed Satellite Services

CC Docket No. 92-297

To: The Commission

**REPLY COMMENTS OF THE INDEPENDENT ALLIANCE**

The Independent Alliance hereby submits its Reply Comments in response to the Commission's Sixth Notice of Proposed Rule Making in the captioned proceeding<sup>1</sup> concerning the sunset of the eligibility restriction<sup>2</sup> for the Local Multipoint Distribution Service ("LMDS"). On January 21, 2000, the Independent Alliance filed Comments in support of the sunset of the eligibility restriction, scheduled for June 30, 2000.

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1 In the Matter of Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Sixth Notice of Proposed Rule Making*, CC Docket No. 92-297, FCC 99-379, released December 13, 1999 ("*Sixth Notice*").

2 The LMDS eligibility restriction prohibits an incumbent local exchange carrier ("ILEC") or incumbent cable company, or any entity with an attributable interest in these incumbents, from having an attributable interest in an LMDS license whose geographic service area significantly overlaps the incumbent's service area. 47 C.F.R. § 101.1003(a).

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The vast majority of commenters<sup>3</sup> in this proceeding share the Independent Alliance's position that the Commission's goal of fostering the development of LMDS and competition would be furthered by sunset of the eligibility restriction on schedule.<sup>4</sup> These comments also demonstrate how the LMDS restriction, particularly as applied to small and rural companies, inhibits the prompt and efficient deployment and utilization of advanced technologies.<sup>5</sup>

The Independent Alliance and other commenters in this proceeding demonstrate that the best way to accomplish consistency and uniformity in fixed wireless regulation (as well as promote deployment of service and competition) is to eliminate the LMDS restriction.<sup>6</sup> As PCIA correctly observes, the Commission has already rejected

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3 See e.g., Comments of the United States Telecom Association ("USTA") at 1, Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") at 2, Comments of the National Telephone Cooperative Association ("NTCA") at 5, Comments of Personal Communications Industry Association ("PCIA") at 2, and Comments of US West, Inc. ("US West") at 2.

4 Contrary to the position advocated by Teligent, Inc. ("Teligent"), MCI WorldCom, Inc. ("MCI"), and Gateway Telecom, LLC ("Gateway"), and as the Commission has recognized in other services, competition among wireless service providers will be enhanced when more providers are allowed to enter the wireless market.

5 See e.g., OPASTCO at 2, NTCA at 5, January 21, 2000 letter from the LMDS Alliance, Joint Comments of Sully Buttes Telephone Cooperative, Inc., and Golden West Telecommunications Cooperative, Inc. ("Sully Buttes") at 4, and Comments of the Rural Telecommunications Group ("RTG") at 11.

6 Teligent supports the adoption of uniform eligibility criteria for all fixed wireless services. Teligent states that "ILEC spectrum eligibility restrictions should either be adopted for all fixed wireless services or not at all." Teligent at 4 (emphasis supplied). Gateway suggests that a restriction similar to the LMDS restriction should be imposed on ILECs in the context of 24 and 39 GHz bands. Gateway at 2.

extending an eligibility restriction to 39 GHz licenses and has tentatively rejected such a restriction for the 24 GHz licenses.<sup>7</sup> PCIA urges the Commission to eliminate unnecessary regulatory distinctions and move to harmonize its treatment of licensees offering similar fixed broadband services to the public by allowing the restriction to sunset on June 30, 2000.<sup>8</sup> USTA also points out that there are no similar restrictions in other spectrum blocks coming up for auction. USTA states that the Commission can simply allow the “failed regulatory policy” to terminate as originally intended on June 30, 2000.<sup>9</sup>

USTA notes correctly that the FCC’s predictive prejudgments of the likelihood that ILECs or incumbent cable providers will engage in anti-competitive behavior<sup>10</sup> regarding ownership of LMDS spectrum is unproven.<sup>11</sup> US West also observes that the

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7 PCIA at 2.

8 *Id.*

9 USTA at 3.

10 The comments of Teligent and MCI advance individual corporate concerns rather than the public interest. Teligent believes that restrictions are necessary to protect its against the ILECs’ alleged use of market power to stifle competition in fixed wireless services. Teligent at 3. Based on the same misguided suspicions, MCI urges the Commission to extend the LMDS eligibility restriction for an additional three years to maximize its opportunity as a new facilities-based provider to compete against ILECs. MCI at 1-2. The past three years of experience, however, demonstrate that sunset of the restriction as scheduled is not only appropriate, but necessary.

11 USTA at 2. As noted by the U.S. Court of Appeals for the D.C. Circuit in discussing its reliance on the Commission’s predictive policy judgment, “a month of experience will be worth a year of hearings.” *Syracuse Peace Council v. FCC*, 867 F.2d 654, 660 (D.C. Cir. 1989)(quoting *American Airlines, Inc. v. CAB*, 359 F.2d 624, 633 (D.C. Cir. 1966) (en banc)), *cert. denied*, 385 U.S. 843 (1966). In this case, the Commission’s three years of experience overwhelmingly demonstrates that the public

past three years have yielded no evidence whatsoever that LMDS operators intend to compete in the provision of local loop services and, therefore, there is no logical justification for the FCC's assumption that full LEC participation in LMDS will be anti-competitive.<sup>12</sup>

As suggested by OPASTCO and NTCA, concerns that rural ILECs will warehouse spectrum are misguided,<sup>13</sup> and the Commission's conclusion that incumbents would obtain LMDS spectrum to prevent competition is illogical.<sup>14</sup> RTG also argues that it would be irrational and impossible for rural telephone companies to attempt to "forestall" competition by acquiring and warehousing LMDS spectrum because there are numerous other competitive alternatives and vast amounts of comparable spectrum available.<sup>15</sup> The Independent Alliance concurs with USTA's statement that "the Commission seems poised to further punish ILECs and cable incumbents by extending the ownership restrictions because of an unfounded fear that these carriers will engage in anti-competitive practices."<sup>16</sup>

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interest would be best served by allowing the LMDS eligibility restriction to sunset as scheduled on June 30, 2000.

12 US West at 2.

13 OPASTCO at 7.

14 NTCA at 5.

15 RTG at 4.

16 USTA at 4.

Several parties echo the position of the Independent Alliance that the LMDS restriction has hindered the deployment of service to the public in rural areas. For example, OPASTCO states that the lack of LMDS deployment in rural areas suggests that the eligibility restrictions have done nothing to enhance and, in fact, reduce, the utility of LMDS spectrum. OPASTCO argues that the restrictions have prevented rural consumers from obtaining the benefits of LMDS,<sup>17</sup> and suggests that the restrictions run counter to the Commission's expressed mission to foster the deployment of advanced services in rural areas and underserved communities.<sup>18</sup>

Contrary to the unsubstantiated and misguided beliefs of Teligent and MCI, the overwhelming majority of commenters in this proceeding (as well as Commissioners Furchtgott-Roth and Powell in their dissenting statements in the *Sixth Notice*) support elimination of needless regulation (such as the LMDS eligibility provision) and unrestricted competition.<sup>19</sup> Allowing the sunset to occur will enhance Independent Alliance members' ability to compete with existing wireless broadband service providers to the direct benefit of their customers in rural America.<sup>20</sup>

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17 OPASTCO at 2.

18 *Id.* at 4.

19 See e.g., USTA at 10-11.

20 Consistent with the experience of the members of the Independent Alliance over the past three years, US West states that there is not need to retain the eligibility restriction since small to medium-sized business markets for broadband service is already competitive. See e.g., US West at 11.

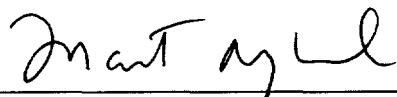
The Independent Alliance concurs with the sentiments expressed by Commissioners Furchtgott-Roth and Powell that the *Sixth Notice* wastes valuable time and resources, serves no meaningful end and will only cause further uncertainty and delay in the implementation of LMDS. Given the experience of the past several years, there exists no facts supporting any economic or public policy rationale for continuing to exclude small and rural providers of local exchange telephone service (or cable service) from the LMDS market, under either the existing or a modified standard.<sup>21</sup> Eliminating the existing artificial barriers will promote competitive provision of services and, therefore, serve the public interest.

Accordingly, based on the record in this proceeding and in furtherance of the public interest, the Independent Alliance submits that the sunset of the LMDS eligibility restriction should occur on schedule.

Respectfully submitted,

The Independent Alliance

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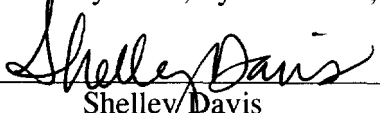
February 11, 2000

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<sup>21</sup> See e.g., Comments of Hyperion Communications Long Haul, LP at 5; RTG at 14; Comments of Central Texas Telephone Cooperative, Inc. at 3 (suggesting modified standard for reviewing sunset of the restriction).

## CERTIFICATE OF SERVICE

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Reply Comments of The Independent Alliance" was served on this 11th day of February 2000, by first class, U.S. mail, postage prepaid to the following parties:

  
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